

### REMARKS

Claims 33-46 are currently pending. Claims 33, 36 and 46 are cancelled without prejudice. Claim 34 is amended. New claims 47-57 are added. No new matter has been added. Reconsideration and allowance is respectfully requested in light of the foregoing amendments and the following remarks.

### **Interview Summary**

Applicant's representative conducted an interview with the Examiner on October 17, 2006 in which:

- (A) No exhibits were shown and no demonstrations were conducted.
- (B) The section of the Office Action entitled "Allowable Subject Matter" was discussed.
- (C) No cited art was discussed.
- (D) No formally proposed amendments were discussed.
- (E) The Examiner clarified that claim 34 would be allowable if it incorporated the limitations of claim 36, 38, 39, 40 or 43.
- (F) No other pertinent matters were discussed.

### **Double Patenting**

Claim 43 stands rejected under 35 U.S.C. §101 as allegedly claiming the same invention as that of claim 15 of U.S. Patent No. 6,741,368 ('368 Patent).

"A reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent." M.P.E.P. Section 804.II.A (citing *In re Vogel*, 422, F.2d 438 (CCPA 1970)). Such a test indicates that, in the case at hand, there is no statutory double patenting.

The applicant has amended claim 34 (from which claim 43 depends) to emphasize the distinct characteristics of the invention. In particular, the claim 34 now discloses that one of the preselected fixed distances is a length of one scan line of the two-dimensional image.

Accordingly, claim 43 is not coextensive in scope with claim 15 of the '368 patent. For at least this reason, claim 43 is in condition for allowance.

Claims 33-42 and 44-46 stand rejected as allegedly being unpatentable over claims 14-26 of U.S. Patent No. 6,741,368 under the doctrine of non-statutory double patenting.

Claims 33, 36 and 46 are cancelled. Accordingly, the rejection of these claims is moot.

To expedite prosecution, and without conceding the obviousness-type double patenting rejection, a terminal disclaimer is being filed herewith in compliance with 37 CFR §1.321 to overcome the non-statutory double patenting rejection.

Accordingly, claims 34-35, 37-42 and 44-45 are in condition for allowance.

### **Section 102 Rejections**

Claims 33-35, 37, 41, 42 and 44-46 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,710,710 ("Houle"). The applicant respectfully traverses this rejection.

Claim 33. Claim 33 is cancelled. Accordingly, the rejection of claim 33 is moot.

Claim 34. Claim 34 recites in part "one of the preselected fixed distances is a length of one scan line of the two-dimensional image". The examiner did not rely on Houle to show this limitation, which was originally found in dependent claim 36 (now canceled). Accordingly, claim 34 and its dependents are in condition for allowance.

Claim 46. Claim 46 is cancelled. Accordingly, the rejection of claim 46 is moot.

### **Allowable Subject Matter**

The Examiner stated that claim 34 would be allowable if it incorporated the subject matter of claim 36, 38, 39, 40 or 43. The applicant has amended claim 34 to include the subject matter of claim 36. Accordingly, claim 34 and its dependents are in condition for allowance.

Claim 47 contains features similar to claims 34. Accordingly, claim 47 and its dependents are in condition for allowance for at least the same reason.

### Conclusion

By responding in the foregoing remarks only to particular positions taken by the examiner, the Applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, the Applicant's arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist.

The Applicant respectfully requests that all pending claims be allowed.

Please apply \$100 to Deposit Account 06-1050 for excess claims fees. Please apply any other charges or credits to Deposit Account 06-1050.

Respectfully submitted,

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